HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 300 of 2004 (MS)

Jogendra Singh ….. Petitioner

Versus

State of Uttaranchal & others …… Respondents

Sri Arvind Vashist, Advocate for the petitioner
Standing Counsel for the respondent no.1.

Dated: 20.4.2004

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for the issue of a writ in the nature of certiorari quashing the order dated 20.8.2004 passed by the Additional Chief Revenue Commissioner and order dated 27.10.1997 passed by Board of Revenue.

Briefly stated the facts giving rise to the present writ petition are that the petitioner has field a suit under section 229B of U.P.Z.A. & L.R. Act in the Court of Assistant Collector and was numbered as Suit No. 22/13 of 1988-89. The suit was decreed n 20.6.1991 against which respondents no.3 to 8 have filed an appeal. The appeal was decided vide order dated 30.12.1993 and the appellate court remanded the case for a fresh decision. The petitioner has preferred second

appeal before the Board of Revenue stating therein that he is in possession over the land in dispute prior to 1977F i.e. prior to applicability of U.P.Z.A. & L.R. Act and he has acquired the Bhumidhari rights over the land in dispute. The Board of Revenue, Allahabad has dismissed the appeal and the order dated 30.12.1993 was upheld. The petitioner after the decision of the Board of Revenue dated 27.8.1997 has preferred a review petition being Review no. 83 of 1997-98 and the review was decided itself by the order dated 20.8.2002 by dismissing the same as being time barred.

Against the order of trial Court dated 20.6.1991 appeal has been preferred before the Commissioner. The case has been remanded back to the trial Court for fresh decision after giving opportunity to the parties to adduce evidence. Against the order of appellate court second appeal was field before the Board of Revenue which was dismissed vide order dated 27.10.1997. If the petitioner would have been aggrieved by the order dated 27.10.1997 he could have straight away challenged the said order but the order having not been challenged shows that the petitioner was satisfied by the remand order.

In view of the above I find no reason to interfere in the order passed by the Board of Revenue. However, since the matter has been remanded by the appellate Court on 30.9.1997, it is desirable that the

entire issues framed by the trial court should be dealt with after affording opportunity to the parties.

The petitioner apprehends that inspite of the fact that he is continuing in possession after the remand of the case his possession shall be disturbed, suffice it to state that since the petitioner is in possession, there is no reason for any interference in his possession during the trial proceedings.

Subject to the aforesaid observations, the writ petition is dismissed. No order as to costs.

(Rajesh Tandon, J.)

20.04.2004
Dhyani